or the absolute grant of land so situated that egress necessitates a way over the grantor's land.[14]

By a novel extension of these principles, a recent case decided that where an offer had been made in writing and an acceptance, also in writing, had been made more than a reasonable time thereafter, parol evidence of an agreement by the offeror to continue the offer was not admissible. *Standard Box Co.* v. *Mutual Biscuit Co.*, 103 Pac. 938 (Cal.). The soundness of the extension may be doubted, for the contract of the parties may well have been concluded by the written acceptance of the parol offer, the latter incorporating the terms of the earlier written offer.

RECENT CASES.

ACCOUNT — DUTY TO ACCOUNT — REQUISITE FIDUCIARY RELATION NOT ESTABLISHED BY CONTRACT. — In consideration of a royalty equivalent to 25 per cent of the net profits of the business as continued by the defendants, the plaintiff sold his business to them together with an exclusive license for the use of his trademarks for a limited period. The defendants thereafter created the B. company to exploit a cheaper grade of perfumery, not bearing the plaintiff's trademarks. The plaintiff sought an accounting of the B. company's business. *Held*, that the plaintiff has no remedy in equity. *Thompson* v. *Crown Perfumery Company & Batcheller Importing Company*, 42 N. Y. L. J. 845 (N. Y. App. D., Nov., 1909).

The plaintiff contended that the relation of the parties was that of *quasi*-partners, in which case the right to an accounting exists. *Marston* v. *Gould*, 69 N. Y. 220. And he alleged that such fiduciary relationship precluded the defendants from conducting any rival business, so that they were liable to account for the same. *Somerville* v. *Mackay*, 16 Ves. 382. It is clear that where there is a fiduciary relationship, equity will compel an accounting. *Harvey* v. *Sellers*, 115 Fed. 757. Otherwise, equity will not interfere. *Foley* v. *Hill*, 2 H. L. Cas. 28. The authorities, however, do not support the plaintiff's contention that a fiduciary relationship existed. If the defendants had agreed to pay over 25 per cent of the net profits as such, they would have become liable as *quasi*-trustees of a specific fund. *Pratt* v. *Tuttle*, 136 Mass. 233. On the other hand, an obligation to pay by way of royalty gives no ground for an account. *Moxon* v. *Bright*, L. R. 4 Ch. 292. And where the profits are merely designated as a measure by which to determine compensation, there is no fiduciary relation. See *Bradley* v. *Wolff*, 40 N. Y. Misc. 592. The plaintiff got no legal interest in the profits. His action was merely one upon a contract to recover royalties, and should have been brought at law. *Preston* v. *Smith*, 156 Ill. 359. The fact that a statement of an account between him and the defendants was necessary to establish his claim, did not require equitable action. *Smith* v. *Bodine*, 74 N. Y. 30.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — INJURIOUS FALSEHOOD BY AGENT. — The plaintiff's declaration alleged that salesmen of the defendant "while acting in the scope of their authority as such salesmen" made false statements about the plaintiff, intending to cause and actually causing damage to the plaintiff's business. *Held*, that the declaration states no cause

[14] Isett *v.* Lucas, 17 Iowa 503; Lebus *v.* Boston, 107 Ky. 98, takes an opposite view, but can be explained on the ground that really the oral agreement to release an existing way proved that the situation did not call for the imposition of a way of necessity.